IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 2407 of 2007(J)

PETITIONER:

P.N. RETNAKUMARI, AGED 58 YEARS,
W/O.R. JANARDHANA PRABHU,
HOUSE NO.4/1187, GOSRI STREET,
NORTH CHERLAI, KOCHI-2.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENTS:

---

1. CORPORATION OF KOCHI,
REP. BY ITS ASSISTNAT EXECUTIVE ENGINEER,
ZOANL OFFICE, FORT KOCHI.

2. G. SREENIVASA PAI,
AGED 56 YEARS, S/O.LATE GOVINDA PAI,
HOUSE NO.C.C.4/1186,
NORTH CHERLAI, KOCHI-2.

BY ADV. SRI.M.K.CHANDRAMOHAN DAS,SC,COCHIN COPN
SRI.MAT.PAI
SRI.A.S.BHAT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO.2407 of 2007

Dated this 15th day of March, 2007

JUDGMENT

The petitioner in this writ petition, who is a neighbour of the 2nd respondent, is aggrieved by what she describes as construction of building by the 2nd respondent in violation of the Municipality Building Rules and in deviation from the approved building permit which was issued to the 2nd respondent by the first respondent Corporation. She complains that the Corporation had, after issuing a provisional order under Section 406 (1) of the Municipalities Act and after inviting explanations from the 2nd respondent, issued final order for demolition on finding that the construction violates building rules in the sense that it encroaches one meter into her property and is in violation of the approved plan. The petitioner alleges that on receiving the final order, the 2nd respondent filed Ext.P3 suit before the Munisiff Court seeking a declaration that the findings in the final order that there is rule violation is wrong and that when the suit was listed for trial

he withdrew from the suit. She relies on Ext.P4 counter affidavit, which had been filed by the Corporation before the Munisiff Court in the interlocutory application for injunction which was filed by the 2nd respondent. Ext.P4, he points out, will show that the Corporation's stand before the Munisiff Court was that the 2nd respondent has violated building rules and deviated from the approved plan while carrying out his construction. The petitioner has produced Ext.P6, which is a hearing notice issued by the Corporation after the suit was got withdrawn. Pursuant to that, the Corporation has passed Ext.P7. According to Ext.P7, the complaint submitted by the writ petitioner will come to an end if the open space on the side of the petitioner's property presently kept open is closed down.

2. I have heard Sri.S.Sachithananda Pai, the learned counsel for the petitioner and Sri.A.S. Bhat, the learned counsel for the 2nd respondent and Sri.C.S.Manilal on behalf of the learned Standing Counsel for the first respondent Corporation. Even though Sri.A.S.Bhat , the learned counsel for the 2nd respondent would try his best to convince me that the rule

violation, which is alleged by the petitioner, is not real and that the same will cease to exist once the decree which is produced as Ext.P2 in W.P.(C) 29650/2004 is fully and finally executed, I am of the view that the Corporation, having already passed a final order of demolition directing the 2nd respondent to demolish portion of the building on the reason that the construction is in violation of the building rules and in deviation from the approved plan and encroaches into the property of the writ petitioner, is not justified in reopening the issue by finding in Ext.P7 that the issue will be resolved if the open space is closed down. In paragraph 3 of Ext.P4 counter affidavit, the Corporation had clearly stated that the construction was put up by encroaching into the writ petitioner's property by one meter. The Standing counsel for the Corporation also would submit before me that since final order of demolition had been passed already it was not quite proper on the part of the Corporation to have reopened the issue by issuing Ext.P6 notice and by passing Ext.P7.

3. I have considered the rival submissions. Though Ext.P7

contains a finding which indicates that the issue raised by the writ petitioner will be resolved once the open space on the side of the writ petitioner's property is closed down, I find that in spite of that finding the petitioner is directed to appear before the Corporation on 16.1.2007. In other words, Ext.P7 cannot be in strict sense a final order. At the time since it is common ground that the Corporation had passed an order of demolition, I am of the view that 2nd respondent should be permitted to challenge that order before the statutory Tribunal.

Accordingly, I dispose of this writ petition quashing Ext.P6 and P7 and relegating the 2nd respondent to the Tribunal for local Self Government Institutions with proper appeal against the order of demolition passed in respect of the building constructed by him. If the Tribunal receives the appeal from the 2nd respondent within one month of the 2nd respondent receiving a copy of this judgment ,the Tribunal will entertain that appeal as one filed on time and dispose of the same in accordance with law. Till such time as the Tribunal disposes of the appeal at its earliest, in view of the above direction, there will be a further

direction that in spite of the qushment of Exts.P6 and P7, the Corporation will not implement demolition, the order passed in respect of the 2nd respondent's property. The writ petitioner will also be made a party in the prospective appeal.

IUS C.KURIAKOSE
Judge

dpk